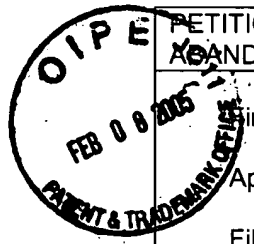


#5 DAC



PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)	Docket Number (Optional) 97005II-US-DIV
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005
REMARK OFFICE

First named inventor: Chua, Christopher

Application No.: 09/933,960

Group Art Unit: 2881

Filed: August 20, 2001

Examiner: Unassigned

Title: Method And Structure For Eliminating Polarization Instability In Laterally-Oxidized VCSELs

Mail Stop Petition
Commissioner for Patents
P. O. 1450
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282

The above-identified application became abandoned for failure to file a timely and proper response to the Notice to File Corrected Application Papers mailed on 10/19/2001, which set a two month (12/19/2001) month/day period for response. The abandonment date of this application is 12/20/2001 (i.e., the day after the expiration date of the period set for response plus any extensions of time obtained herefore).

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- 1) Petition fee;
- 2) Proposed response and/or issue fee;
- 3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- 4) Statement that the entire delay was unintentional.

- 1) Petition fee

- ☐ Small entity – fee \$_____ (37 C.F.R. § 1.17(m))
☐ Small entity statement enclosed herewith.
☐ Small entity statement previously filed.
☒ Other than small entity – fee **\$1500.00** (37 C.F.R. §1.17(m))

- 2) Proposed response and/or fee

- A. The proposed response and/or fee to the above-noted Office Action in the form of an Amendment and Response (identify type of response):
- ☒ has been filed previously on May 30, 2003 (copy enclosed).
- ☐ is enclosed herewith.

- B. The issue fee of **\$1400**
☐ has been paid previously on _____.
☐ is enclosed herewith. (Authorization to Charge Deposit Account)

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3) Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 C.F.R. § 1.20(d)) of \$0.00 for a small entity or \$130.00 for other than a small entity) disclaiming a period equivalent to the number of months from the date of abandonment to the filing of this petition is enclosed herewith.

4) Statement. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional. Check box A, or check box B and/or C as applicable and include an explanation of the delay on a separate sheet or on supplemental sheet PTO/SB/64A.

- ☐ A. This petition is filed within three months of the date the applicant was first notified, or otherwise became aware, that the application was abandoned and with one year of the date of abandonment of the application.
- ☒ B. This petition is **not** filed within three months of the date the applicant was first notified, or otherwise became aware, that the application was abandoned. A detailed explanation of the cause of the delay in filing the petition is attached on a separate sheet or on supplemental sheet PTO/SB/64A.
- ☒ C. This petition is **not** filed within one year of the data of abandonment of the application. The applicant first became aware of the abandonment on January 11, 2005. A detailed explanation of the delay in discovering the abandoned status of the application is attached on a separate sheet or on supplemental sheet PTO/SB/64A.

Respectfully submitted,



Kent M. Chen
Attorney for Applicant(s)
Registration No. 39,630
Telephone: 310-333-3663

Xerox Corporation
El Segundo, CA
Date: February 8, 2005

Enclosures: ☒ Authorization To Charge Deposit Account
☐ Terminal Disclaimer _____
☐ Small Entity Status Form
☐ Reply: _____

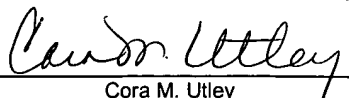
CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that the following paper is being:

- ☒ deposited with the United States Postal Service as "Express Mail" on the date shown below in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

Date: 02/08/2005

Signature: _____



Cora M. Utley

Typed or printed name of person signing this certificate



PATENT APPLICATION
Attorney Docket No. 97005II-US-DIV

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on February 8, 2005.

Typed or printed name of person signing this certificate
Cora M. Utley

Signature: _____

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First named inventor: Christopher Chua

Application No.: 09/933,960

Group Art Unit: 2881

Filed: 08/20/2001

Examiner: Unassigned

Title: Method and Structure For Eliminating Polarization Instability In Laterally-Oxidized VCSELs

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

Authorization is hereby given to charge Deposit Account No. 24-0025 the following fees:

- ☒ **\$1500.00** Petition Fee for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.17(m). Two copies of this Authorization are enclosed.
- ☐ **\$1370.00** Issue fee for Patent Application No.: _____
- ☐ **\$110.00** Terminal Disclaimer Fee Under 37 C.F.R. § 1.20(d).

Respectfully submitted,

Kent M. Chen
Attorney for Applicant(s)
Registration No. 39,630
Telephone: (310) 333-3663

Xerox Corporation
El Segundo, California
Date: February 8, 2005

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PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Mail Stop Petitions
Commissioner for Patents
P.O. BOX 1450
Alexandria, VA 22313-1450
Fax (703) 872-9306

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The above-identified application was abandoned on December 21, 2001 for Applicant's failure to respond to the Notice to file Corrected Application Papers mailed October 21, 2001.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.

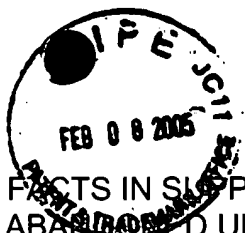
1. Petition Fee
2. Reply and/or Fee. The reply and/or fee to the above noted Notice to file Corrected Application Papers mailed October 21, 2001 in the form of an Amendment and response which amended the claims and provided an Abstract of the Disclosure has been filed previously on May 30, 2003.
3. Terminal Disclaimer with disclaimer fee. Since this utility application was file on or after June 8, 1995, no terminal disclaimer is required.
4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

Respectfully submitted,

Kent M. Chen
Attorney for Applicants
Registration No. 39,630
Telephone: 310-333-3663

Xerox Corporation
El Segundo, California
February 8, 2005

Enclosures: Fee Payment
Additional Sheets containing statements establishing unintentional delay.



STATEMENT OF FACTS IN SUPPORT OF PETITION TO REVIVE APPLICATION
FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

The above-identified application number 09/933,960 is a Divisional of Application serial number 09/389,160 filed September 2, 1999 which is a Continuation in Part of Application number 09/364,614 filed July 29, 1999, which is a Continuation in Part of Application number 08/940,867 filed September 30, 1997 which claims the benefit of Provisional Application 60/037,175 filed February 7, 1997).

Because the petition was not filed within 3 months of the date the USPTO first mailed Applicant notice that the subject application was abandoned, Applicant includes herewith a statement of facts showing how the abandonment and the subsequent time period following abandonment was entirely unintentional, in compliance with MPEP 711.03(c).

- 1) On August 20, 2001, Applicant filed the subject divisional application in partial response to the restriction requirement mailed May 29, 2001 in Application serial number 09/389,160. The filed divisional application became the subject Application number 09/933,960.
- 2) Applicant's files indicate that the subject Application included 32 pages of specification (including pages 1-27 of description, pages 28 to 31 of claims and page 32 for the Abstract of the Disclosure).
- 3) On October 19, 2001, the USPTO mailed a Notice to File corrected application papers indicating that the final two pages were missing, namely the last three claims on page 31 and the abstract (a copy of the Notice to File Corrected Application Papers and pages 31 and 32 are attached hereto).
- 4) Applicant's attorney, Kent M. Chen, reviewed the received Notice to File Corrected Application Papers. The Notice to file Corrected Application Papers listed three options for response:

Option 1 –Should applicant contend that the above omitted items [the last two pages] were deposited in the USPTO, Applicant can file a copy of this notice [to file corrected application papers] and a petition with evidence of such deposit. The evidence of deposit must be filed within two months of the date of notice.

Option 2 – Should Applicant desire to supply the omitted items and accept the date that such omitted items are filed in the USPTO, Applicant must file a copy of this notice and the omitted items with a supplemental oath and declaration within two months of the date of notice.

Option 3 – Failure to proceed under option 1 or option 2 within two months of the date of this notice will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the

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application in the USPTO and original application papers will include only those application papers present in the USPTO on the date of deposit.

Applicant's attorney did not separate the requirement for filing an abstract within two months from the other options provided in the Notice to File Corrected Application Papers.

5) Applicant's attorney believed that option III provided in the Notice to File Corrected Application Papers was a viable option: that no response was required. Option III stated that "In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (i.e. the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit".

6) The contents of the missing page 31 were claims 13-15. The content of the missing page 32 was the Abstract of the Disclosure. The Abstract of the Disclosure is correctable under MPEP 608.01(b)). Thus, by including only pages 1-30 of the application, all of the specification and claims 1-12 would be included.

7) When Applicant's attorney reviewed the Notice to File Corrected Application Parts, and elected Option III, Applicant's attorney elected to file an Amendment and response at a later date to add the missing claims from page 31 and to add an Abstract of the Disclosure. An Abstract of the Disclosure could be added to the specification without adding any new matter to the specification, since the material was already included in other parts of the specification, particularly the Brief Summary of the Invention, and since the parent application, which was incorporated by reference in its entirety, included substantially the same Abstract of the Disclosure. Applicant notes that MPEP 608.01 allows Examiner corrections of defective abstracts even just prior to passing the application to issue.

8) On May 30, 2003, Applicant filed an Amendment and Response to amend the claims and provide an Abstract of the Disclosure without adding any new matter. (A copy of the USPTO facsimile receipt of the Amendment and a copy of the Amendment are enclosed). In the remarks section of Applicant's May 30, 2003 Amendment, Applicant stated that the Amendment was filed in response to the Notice to File Corrected Application Papers mailed October 19, 2001. The remarks further stated that it was believed the application was thus complete, and that no new matter was added to the Application. Applicant continued to believe that option III had been properly elected and that the application was complete based on only materials presented to the USPTO on the date of deposit.

9) The filing of the Amendment on May 30, 2003 further shows that Applicant's attorney incorrectly believed at the time that the Application was still pending and had not been abandoned further supporting Applicant's contention that the abandonment was unintentional.

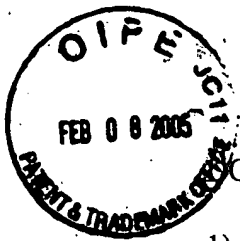
10) On October 14, 2003, the USPTO sent out a notice of abandonment to Applicant's docketing system in Rochester, New York. Upon investigation, it has been discovered that the notice of Abandonment was recorded in a docketing agent's logsheet. However, human error resulted in a failure to enter the notice of abandonment into the computer system that notifies attorneys of abandonments and other USPTO mailings. Without an entry into the computer system, no entry was made into the attorney's docket. The attorney responsible for the case, located in El Segundo, California was unaware that the case was abandoned and that a petition to revive was needed. (See attached declaration from the Xerox docketing coordinator, Debby Kadlubowski.)

11) After docketing, the Notice of Abandonment was sent to El Segundo. Upon receipt of mail from Rochester, Applicant's administrative assistant (Cora Utley) normally retrieves items from the mailroom, tags items that need attorney action and places those items in the Attorney's Office for action by the Attorney. Items the Administrator believes do not require Attorney attention, the Administrator directly files in the proper files of the file room, bypassing Attorney's office. When Attorney finishes working on the files placed in his office, Attorney usually gives the file back to the Administrator with a prepared response for filing in the USPTO. The Administrator then finalizes the response for transmission to the USPTO and places the response, and the USPTO correspondence in the file in the file room. It is believed that the Notice of Abandonment went from the mailroom to the file room bypassing Attorney's office because (1) Attorney has no recollection of seeing the Notice of Abandonment, and (2) Attorney first discovered the Notice of Abandonment when retrieving the file from the file room on January 11, 2005.

12) Applicant's attorney first became aware of the abandonment of the subject patent application on January 11, 2005. January 11, 2005 is the first time Applicant's attorney had reason to open the file wrapper for the subject application since he filed the Preliminary Amendment on May 30, 2003. Applicant's attorney opened the file wrapper on January 11, 2005 in response to a notice mailed On December 27, 2004 by the USPTO that an unidentified applicant was seeking to provoke an interference with related application 09/382,022, now US patent no. 6,208,681 (the Thornton patent). The 022 application is co-assigned to the assignee of the subject patent application, Xerox Corporation. Applicant's attorney received the notice upon returning from Christmas vacation in early January of 2005. In preparation for the potential interference, Applicant pulled the file wrapper for the subject patent application. Upon opening the file for the subject application, Applicant's attorney was surprised to discover the notice of abandonment mailed October 14, 2003.

13) Upon learning of the abandonment, Applicant's attorney conducted an investigation of the old printed dockets to try and determine the reason for abandonment and the period of time between abandonment and the filing of this petition to revive.


14) It is clear from the record that Applicant's attorney did not intend to abandon the application, and that the abandonment, as well as the entire delay in filing the petition to revive, was the result of accidents and was unintentional. Thus, Applicant respectfully requests that the USPTO revive the subject application.



DOCKETING STATEMENT:

- 1) I, Deborah Kadlubowski, am a docket coordinator for the patent docketing department of Xerox Corporation. I am based in Rochester, New York. I have worked for the docketing department at Xerox Corporation since November 16, 1998.
- 2) On October 14, 2003, the USPTO sent out a Notice of Abandonment for U.S. Patent Application 09/933,960.
- 3) I received and recorded the receipt of the Notice of Abandonment in my log sheets. However, human error resulted in a failure to enter the Notice of Abandonment into the computer system that notifies attorneys of abandonments and other USPTO mailings.
- 4) The Attorney does not have access to my log sheets, thus without an entry into the computer system, no entry was made into the Attorney's docket. In accordance with the patent docketing department's usual procedure, I placed the original Notice of Abandonment in an envelope addressed to the Attorney's administrative assistant (Cora Utley) and mailed it by interoffice mail to El Segundo, CA.
- 5) When an attorney decides to abandon a case, the standard procedure is for the attorney to send a Change of Status e-mail instructing the patent docketing department to change the status of the application in Xerox's database to "abandoned". I never received such an e-mail for Application 09/933,960.
- 6) As of January 12, 2005, the Xerox legal department data bases still showed the status of Application 09/933,960 as "pending".
- 7) To the best of my knowledge, the delay in filing a Petition to Revive was a result of accidents and was not intentional.

Signed


Deborah Kadlubowski
Docketing Coordinator
Xerox Docketing Department

2-4-2005